

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 5251 OF 2007

Kolhapur Zilla Sahakari Doodh
Utpadak Sangh Maryadit, Kolhapur.... Petitioner

versus

State of Maharashtra & ors. Respondent.

Mr. Y.S. Jahagirdar with Shri S.S.Pakale for the
petitioner.

Mr. P.K.Dhakephalkar Sr. Adv. with Shri S.S.
Patwardhan for Respondents 5 and 38.

Mr. S.R.Nargolkar for Respondents 1 to 4.

CORAM; A.P. DESHPANDE, J.
DATED; 18TH JULY, 2007

P.C.;

1. The petitioner is a Doodh Utpadak Sangh and is engaged in the activity of procuring milk from its members and marketing the same under the brand name "Gokul". The petitioner procures the said milk from its various members. The respondent nos. 5 to 65 are societies registered under the Maharashtra Co-operative Societies Act and are in turn members of the petitioner Sangh. Under the bye-laws of the petitioner society, the respondent nos. 5 to 65 are obliged to supply milk to the petitioners. As the

respondent nos. 5 to 65 along with some other member societies avoided to supply the milk to the petitioner, the petitioner took a decision to take action against the defaulting members including respondent nos. 5 to 65. After issuing notices, when the defaulting members did not respond, the petitioner decided to convene a special general body meeting of the Sangh to take a decision to expel the defaulting members.

2. Pursuant to the said decision on 3-6-2005 the petitioner issued notices to the respondent nos. 5 to 65 under Rule 29 of the Maharashtra Co-operative Societies Rule 1961 and informed the scheduled date of the special general body meeting to be 13-7-2005. On an application moved by some defaulting society, the Minister for Dairy Development purportedly in exercise of powers under section 154 of the Act granted stay to the discussion of item nos. 2, 3 and 4 of the agenda in the meeting scheduled to be held on 13-7-2005. On account of the passing of the said stay order, the subject of expulsion of the respondents could not be taken up in the special general body meeting dated 13-7-2005. The present petitioners Sangh challenged the order dated 12-7-2005 passed by the Minister by filing a writ petition bearing No.4609 of 2005 with a view to ensure that no further meeting or discussion

therein is aborted on account of the ex-parte order passed by the Government. The order passed in the said writ petition does not have any bearing on the issue that arises for consideration in the present writ petition.

3. Yet again on 11-10-2005 the petitioner issued another show cause notice to the respondents under Rule 29 of the Rules calling upon the respondents to explain their failure to supply the milk to the petitioner and further informing the respondents that the issue of expulsion would be taken up in the general body meeting scheduled to be held on 11-11-2005. The meeting was held and a resolution to expel the respondent nos. 5 to 65 was unanimously passed therein. Acting in furtherance of the said unanimous resolution, expelling the respondent, the petitioner moved an application before the respondent no.2 Deputy Registrar and sought approval to the said resolution as provided under section 35 of the Act. The respondent nos. 5 to 65 opposed the prayer of the petitioner for approval of the resolution of expulsion by contending that notices were despatched on 11-10-2005 and the meeting was scheduled to be held on 11-11-2005. It was contended that the respondents were not served with notices of clear one month and hence it was contended that the action of expulsion

taken in the meeting dated 11-11-2005 is illegal being in contravention of Rule 29 of the Rules.

4. The Deputy Registrar interpreted the phraseology used in Rule 29 so as to require only issuance of a notice one month before. In the opinion of the Deputy Registrar, the mandate of Rule 29 stands complied with, the moment it is shown that the notices were issued one month before. He held that the date of service of notice is immaterial to count the period of one month and the requirement of Rule 29 is to only issuance of notice one month before. So reading Rule 29, the Deputy Registrar granted approval to the resolution of expelling the respondent nos.5 to 65. The requirement of approval is contemplated under the proviso to Section 35(1). Aggrieved by the order granting approval, the respondents filed an appeal before the Respondent no.3 Joint Registrar. The appeal came to be dismissed as the appellate authority concurred with the view taken by the first authority. The respondent nos. 5 to 65 challenged the decision rendered by respondent nos. 2 and 3 by filing a revision before the State Government. The revision has been allowed and aggrieved thereby the present writ petition has been filed.

5. The learned Senior Advocate Mr. Jahagirdar for

the petitioner contended that as the respondent nos. 5 to 65 were acting detrimental to the interest of the petitioners by avoiding to supply the milk, the petitioner was constrained to initiate action against the said respondents. Being in know of the view taken by this court on interpretation of Rule 29 that a notice under Rule 29 in the matter of expulsion of member referable to section 35 of the Act, has to be served on the member against whom, resolution is proposed to be passed atleast one month prior to the date of the meeting, the learned advocate did not try to justify the view taken by the Deputy Registrar and chose to proceed on different lines. Division Bench of this court has interpreted Rule 29 in a judgment in case of **Bhaskar Laxman Rane Vs. Shri Gurudev Nityanand Co-operative Housing Society Ltd.** reported in 1998(3) Mh.L.J. page 127.

6. The learned counsel for the petitioner has submitted that the first notice was issued on 3-6-2005 under rule 29 of the rules, and a special general body meeting was scheduled to be held on 13-7-2005 but the subject could not be discussed on account of grant of stay by the concerned Minister. It is submitted that the notice dated 3-6-2005 holds good, and even if the second notice dated 11-10-2005 is not served on the respondent nos. 5 to 65 one month before, the

petitioner can always fall back upon the first notice to justify the validity of the general body meeting held on 11-11-2005, as according to the petitioner the first notice was not cancelled. The learned counsel submits that the purpose of issuing a notice under Rule 29 is to appraise the concerned member that the subject of his expulsion will be considered in the next meeting. Thus the submission is that the respondent nos. 5 to 65 were aware that they would be facing the resolution of expulsion in the next meeting. As the first meeting was aborted the said subject can be very well considered in the general body meeting and the same was as such considered, and an appropriate decision was reached.

7. Per contra the learned senior counsel Shri Dhakephalkar appearing for respondent nos. 5 to 65 has submitted that strict compliance of Rule 29 has to be mandated as the provision contained in section 35 is a penal provision dealing with the expulsion of a member. Placing reliance on the judgment referred hereinabove, it is submitted that the second notice issued intimating the petitioner about the date, time and place of meeting ought to have been served one month before having regard to the language used in Rule 29 which reads thus:

"General body meeting to be held not earlier than a period of one month from the date of such notice".

It is also pointed out that neither the second notice nor the agenda of the general body meeting make any reference to the earlier notice dated 3-6-2005. The resolution of expulsion is based upon and passed in view of the notice dated 11-10-2005 and thus it is submitted that the petitioner cannot be permitted to justify the legality of the resolution passed in the general body meeting held on 11-11-2005, on the basis of notice dt. 3-6-2005.

8. From the order impugned it does not appear that the contention which is sought to be raised in this court was raised in the revision before the State Government. The petitioner had tried to justify the resolution of expulsion on the basis of notice dated 11-10-2005. The passing of the resolution and decision in regard to expulsion are based only on notice dated 11-10-2005. The petitioner cannot be permitted to fall back upon an earlier notice dated 3-6-2005 as the scheduled meeting dated 13-7-2005 could not be held and the subject of expulsion could

not be discussed therein, the notice dated 3-6-2005 was rendered redundant. Knowingly well that the said notice would be of no assistance to the petitioner, a fresh notice was issued on 11-10-2005 to be discussed in the general body meeting scheduled on 11-11-2005. In this view of the matter, I am in agreement with the view taken in the impugned order that as no clear one month notice was served on respondent nos. 5 to 65 the resolution of expulsion passed in the general body meeting was not legal and valid and hence cannot be granted approval under section 35(a) of the Act. The impugned order does not suffer from any patent illegality warranting any interference in exercise of writ jurisdiction. Hence the writ petition is summarily dismissed.

xxx